

DECISION



15288
PC2
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-200835

DATE: October 27, 1980

MATTER OF: Midwest Interiors, Inc.

DIGEST:

1. Failure to acknowledge wage rate determination amendment may not be waived as minor informality in bid.
2. After bid opening, bidder may not be given opportunity to delete nonresponsive conditions.

Midwest Interiors, Inc. (Midwest) protests the Department of the Army's refusal to consider its bid under invitation for bids (IFB) No. DAKF19-80-B-0047.

Midwest's bid was rejected because the firm failed to acknowledge a solicitation amendment which included a revised wage determination. Midwest argues that its bid should have been considered because after bid opening it submitted the amendment with a provision "disclaim[ing] and releas[ing]" the Government from any claims for additional costs resulting from the revised wage determination.

The established rule as to the effect of a bidder's failure to acknowledge an amendment to an invitation for bids is that when the amendment affects, in other than a "trivial or negligible" manner, the price, quality, quantity, or delivery schedule of the procurement, the bidder's failure to acknowledge the amendment in compliance with the terms of the invitation or amendment cannot be waived. See Defense Acquisition Regulation § 2-405 (1976 ed.).

[Protest Against Army Refusal To Consider
Bid]

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Where a bidder fails to acknowledge an amendment which modifies or adds a wage rate determination, the failure may not be waived as a minor informality. This result is required because the Government's acceptance of a bid which does not contain an agreement to pay the appropriate wages does not bind the contractor/employer to the Government to pay wages to which its employees are entitled under the Davis-Bacon Act. Thus, the wage determination is designed to protect the bidder's employees and their rights may not be waived by the Government. See Prince Construction Company, B-184192, November 5, 1975, 75-2, CPD 279, Rothwell Brothers, Inc., B-190311, October 21, 1977, 77-2 CPD 316. Further, we have consistently held that a bidder may not be given the opportunity after bid opening to delete nonresponsive conditions. See United McGill Corporation and Lieb-Jackson, Inc., B-190418, February 10, 1978, 78-1 CPD 119.

Accordingly, the failure to acknowledge the amendment revising the wage rate determination is a material deviation which is not subject to waiver.

The protest is summarily denied. See Inflated Products Company, Inc., B-190877, May 11, 1978, 78-1 CPD 362.

Milton J. Jocular

For the Comptroller General
of the United States